



Tripartite Deed

DBNGP (WA) Transmission Pty Limited
and

[Shipper]

and

[Security Holder]

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| | |
|-----------------|---|
| Date | |
| Parties | |
| 1. | DBNGP (WA) Transmission Pty Limited (ABN 69 081 609 190) of Level 7, GHD House, 239 Adelaide Terrace, Perth, Western Australia, 6000 (Operator) |
| 2. | [#] (Shipper) |
| 3. | [#] (Security Holder) |
| | [Note: Without limiting clause 25.2 of the Access Contract Terms and Conditions, this document may be amended where necessary: |
| | (a) to reflect bona fide differences between Shipper's requirements and the requirements of shippers generally (for example, amendments necessary to reflect Shipper's ownership structure); |
| | or |
| | (b) to reflect bona fide requirements of particular securities (for example, where there is only one chargee).] |
| Recitals | |
| A | Operator has entered into a contract with Shipper for the transportation of gas on the DBNGP (the Transmission Contract). |
| B | Operator and Shipper have agreed to enter into this deed with the Security Holder. |

Operative Provisions

1. Interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised Officer means:

- (a) in the case of the Security Holder, a director or company secretary, or an officer whose title contains the word "director", "chief", "head", "president" or "manager" or a person performing the functions of any of them or any other person nominated by the Security Holder as an Authorised Officer for the purposes of this deed;
- (b) in the case of Shipper, a director or company secretary of Shipper or any other person nominated by Shipper as an Authorised Officer for the purposes of this deed; and
- (c) in the case of Operator, a director or company secretary of Operator or any other person appointed by Operator to act as an Authorised Officer under this deed.

Beneficiary includes the Security Holder and any person on whose behalf the Security Holder holds the Security, whether as trustee, agent, nominee, custodian or otherwise.

Cure Notice means a notice given by Shipper to the Security Holder in respect of a Default Event and includes the following:

- (a) details of the Default Event and refers to the relevant provisions (if any) of the Transmission Contract relating to the Default Event;
- (b) a statement that Shipper will rely upon that Default Event to Terminate the Transmission Contract unless it is remedied;
- (c) the Cure Period applicable to the Default Event; and
- (d) details of steps or actions which Shipper considers may remedy the Default Event or are otherwise appropriate.

Cure Period means the period commencing on the date set out in the Cure Notice (not being a date earlier than the date on which the Security Holder receives the Cure Notice for a Default Event) and ending:

- (a) if the Default Event is a repudiation, disclaimer or default by Operator in the performance of the obligations of Operator under clause 16 of the Transmission Contract to provide contracted capacity, not less than 40 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of Shipper under clause 22.9(b) of the Transmission Contract;
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of an ascertainable sum of money, not less than 15 Working Days after a Termination Right in respect of the Transmission Contract arises on the part of Shipper;
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) and is an Insolvency Event or is capable of being remedied, not less than 60 Working Days (or any further period from time to time agreed by Shipper and an Enforcing Operator Party) after a Termination Right in respect of the Transmission Contract arises on the part of Shipper; and
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, not less than 15 Working Days after an amount is agreed by Shipper and Operator or an Enforcing Operator Party (as the case may be) or awarded by a court of competent jurisdiction,

unless the period is ended earlier by the Security Holder or an Enforcing Operator Party by giving notice in writing (which will take effect immediately on receipt by Shipper) to Shipper and as extended from time to time under clause 3.7.

Default Event means any event or circumstance which would:

- (a) entitle Shipper to give a notice under the Transmission Contract requesting that default be remedied; or
- (b) either immediately or upon the expiry of any time period, giving of notice or satisfaction of some other condition provided for under the Transmission Contract, give rise to a Termination Right; or
- (c) constitute a repudiation or disclaimer of the Transmission Contract by Operator.

Default Notice means any notice given by Shipper to Operator in respect of a Default Event, including any notice required under the terms of the Transmission Contract to be given by Shipper if it is to rely upon, or exercise any Power in respect of, that Default Event.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement, or any agreement to create any of them or allow them to exist.

Enforcing Operator Party means the Security Holder or any Receiver, agent, controller, administrator or attorney or nominee appointed pursuant to the Security, or any person claiming through or under the Security Holder (including any person acquiring any rights on realisation of the Security). It also includes the Security Holder as mortgagee in possession.

Event of Default has the meaning it has in the Security.

Force Majeure has the meaning it has in the Transmission Contract.

Force Majeure Notice means any notice given under clause 19 of the Transmission Contract in respect of an event of Force Majeure, and all attachments and other particulars given or required to be given under the Transmission Contract in connection with the occurrence of the event of Force Majeure.

GST means Australian Goods and Services Tax payable in accordance with *A New Tax System (Goods and Services Tax) 1999* (Cth) or any goods and services tax, value added tax or similar tax imposed in any applicable jurisdiction.

Independent Expert has the meaning it has in the Transmission Contract.

Insolvency Event has the meaning it has in the Transmission Contract and a person is Insolvent if an Insolvency Event occurs in respect of that person.

Permitted Assignee has the meaning provided in clause 7.1.

Power means any right, power, authority, discretion, remedy or privilege, whether express or implied (including to exercise a Termination Right or grant releases or waivers) conferred on any person.

Receiver includes a receiver or receiver and manager.

Relevant Account means a bank account nominated by the Security Holder.

Related Entity has the meaning it has in the *Corporations Act 2001* (Cth).

Security means any Encumbrance in favour of or with any Beneficiary granted by or entered into by a Security Provider relating to or which may affect the Transmission Contract.

Security Holder means the Security Holder, and includes its successors, substitutes and assigns.

Security Provider means the party granting or entering into the Security to or with the Security Holder.

Security Trust means the trust created by the Security Trust Deed.

Security Trust Deed means the deed dated on or about the date of this deed entitled "Security Trust Deed" between, among others, Operator and the Security Holder.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

Terminate means, in relation to a document, to terminate, determine, rescind, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance), or accept the termination, rescission or repudiation of that document and **Termination** has a corresponding meaning.

Termination Right means, at any time, any right of Shipper to, but for this deed, Terminate the Transmission Contract.

Transmission Contract has the meaning given in Recital A.

Working Day means any Monday, Tuesday, Wednesday, Thursday or Friday which is not gazetted as a public holiday in the Perth metropolitan area.

1.2 Terms defined in the Transmission Contract

A term which has a defined meaning in the Transmission Contract has the same meaning when used in this deed unless it is expressly defined in this deed in which case the meaning in this deed prevails.

1.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;
- (b) the singular includes the plural and vice versa;
- (c) a particular person includes a reference to the person's substitutes (including persons taking by novation), successors and assigns;
- (d) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (e) a reference to assign (and other cognate expressions) includes selling, assigning, transferring, novating or creating or permitting to exist any Encumbrance over or an interest in or otherwise disposing of or dealing with, any of that party's rights or obligations or both under or in connection with a document (including the Transmission Contract);
- (f) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) a reference to amend (and cognate expressions) includes any amendment, variation, supplement, replacement or novation;
- (i) a document (including this deed) includes any variation or replacement of it, provided it is not prohibited by this deed; and
- (j) the word **person** includes a firm, body corporate, an unincorporated association or an authority.

1.4 Obligations as to time

For the avoidance of doubt, if an obligation under the Transmission Contract requires a thing to be done or occur by a certain time or date, a breach of that obligation will be remedied when that thing is done or occurs notwithstanding that the relevant time or date has passed and no obligation under the Transmission Contract is incapable of remedy merely because the time or

date for it to be done or to occur has passed, unless the Transmission Contract has been validly terminated prior to the breach of obligation being remedied.

1.5 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

1.6 Duration

This deed terminates (without limiting any rights accrued prior to termination) when the Security Holder gives notice to Shipper that it has fully and finally discharged and released the Security.

1.7 Consideration

This deed is entered into in consideration of the parties incurring obligations and giving rights under this deed and for other valuable consideration.

1.8 Security Holder

- (a) The Security Holder enters into this deed only in its capacity as trustee of the Security Trust and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against the Security Holder only to the extent to which it can be satisfied out of the trust fund of the Security Trust out of which the Security Holder is actually indemnified for the liability, except in the case of fraud, wilful misconduct, gross negligence or breach of trust. This limitation of the Security Holder's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Security Holder in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed, except in the case of fraud, wilful misconduct, gross negligence or breach of trust.
- (b) The parties other than the Security Holder may not sue the Security Holder in connection with this deed in any capacity other than as trustee of the Security Trust, nor may they seek the appointment of a receiver (except in relation to the trust fund of the Security Trust), a liquidator, an administrator or any similar person to the Security Holder or prove in any liquidation, administration or arrangement of or affecting the Security Holder (except in relation to the trust fund of the Security Trust).
- (c) The provisions of this clause 1.8 shall not apply to any obligation or liability of the Security Holder to the extent that it is not satisfied because under the trust deed establishing the Security Trust or by operation of law there is a reduction in the extent of the Security Holder's indemnification out of the assets of the Security Trust, or as a result of the Security Holder's fraud, wilful misconduct, gross negligence or breach of trust.
- (d) In relation to the administration of rights and obligations of the Shipper and the Security Trustee under this deed the Shipper is entitled to deal only with the Security Trustee and is under no obligation or duty to enquire as to the authority of the Security Trustee or to confer with, contact or seek approvals, consents or waivers of any of the Beneficiaries for the time being (past or present) and the Beneficiaries are only entitled to deal with the Shipper through the Security Trustee.

1.9 Precedence of obligations

If any ambiguity, inconsistency or conflict of obligations exists or arises between this deed and the Transmission Contract, the provisions of this deed take precedence over and apply to resolve that ambiguity, inconsistency or conflict.

2. Acknowledgments and Consents

2.1 Shipper

Shipper:

- (a) acknowledges that it has received notice of the Security, including the charging and assigning by the Security Provider to the Security Holder of its right, title and interest in, to, under and derived from the Transmission Contract and agrees that there are no restrictions under the Transmission Contract on granting such Security;
- (b) irrevocably consents to the Security and this deed;
- (c) acknowledges that:
 - (i) neither the existence of the Security nor the exercise of any Power under any Security will of itself contravene or constitute a default under the Transmission Contract or entitle it to exercise any right or power under the Transmission Contract (including the right to terminate);
 - (ii) any Enforcing Operator Party may directly exercise and enforce, in accordance with the Security Documents, any powers conferred on Operator under the Transmission Contract in accordance with the Transmission Contract; and
 - (iii) at any time after the commencement or enforcement of any Security, any Enforcing Party may, but is not obliged to, exercise all or any of the powers of Operator, and perform all or any of the obligations of Operator under or in relation to the Transmission Contract;
- (d) agrees that the Security Holder, an Enforcing Operator Party and each Beneficiary (if any) may provide a copy of the Transmission Contract and this deed (and correspondence and notices in relation to the Transmission Contract and this deed) to any person permitted by the terms of the Security and any proposed purchaser or assignee of any or all of Operator's assets (including any contracts or choses in action) or any equity interest in Operator (and to their consultants and advisors) and to any consultants or advisors engaged by the Security Holder, an Enforcing Operator Party or a Beneficiary, subject to compliance with the requirements as to confidentiality in the Transmission Contract; and
- (e) acknowledges that if Shipper elects or is granted additional equity in the Consortium Holding Trust, pursuant to clause 16.10 of the Transmission Contract, then such additional equity must be subject to a share mortgage in favour of the Security Holder (if the additional equity is in the form of shares), or, fully subordinated to debt secured by the Security (if the additional equity is in the form of a loan), in both cases on terms satisfactory to the Security Holder.

Nothing in clause 2.1 relieves Operator or any Permitted Assignee (to the extent a Permitted Assignee has become a party to the Transmission Contract) from its obligations under the Transmission Contract.

2.2 No interference

Each of Shipper and Operator undertake that it will not hinder or prevent the Security Holder, the Beneficiaries (if any) or the Enforcing Operator Parties exercising or enforcing their rights under the Security or this deed, provided that, in relation to exercising any rights under this deed, the

Security Holder or any Enforcing Operator Parties exercise or enforce their rights under this deed in accordance with this deed.

2.3 Releases in favour of Security Holder

Each of Shipper and Operator agree that despite any provision of the Transmission Contract:

- (a) the parties to the Security may at any time amend the Security and persons may become Beneficiaries without the consent of Shipper;
- (b) neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary has any obligation or commitment whatsoever to arrange, provide or reschedule any financial accommodation in connection with Operator or its assets or the Transmission Contract;
- (c) at any time while an Event of Default subsists, the Security Holder and any Enforcing Operator Party may exercise all or any of Operator's Powers and perform all or any of Operator's obligations under or in connection with the Transmission Contract as if it were, and to the exclusion of, Operator; and
- (d) except in respect of any obligation expressly assumed by the Security Holder in accordance with this deed, neither the Security Holder nor any Enforcing Operator Party nor any Beneficiary is at any time obliged to:
 - (i) remedy or prevent any Default Event or Termination;
 - (ii) observe or perform any of Operator's obligations under the Transmission Contract; or
 - (iii) exercise any of its Powers under or in connection with this deed, the Transmission Contract or the Security or continue to exercise them or exercise them in any particular manner,

and, is not liable, will not be taken to have assumed liability, and will not become (including as a result of taking any of these actions) liable for any liability or responsibility including for any Direct Damage or any Indirect Damage or to perform any obligation under or in connection with the Transmission Contract, this deed or the Security.

2.4 Shipper and Operator continue to deal

The parties agree that, despite the creation of the Security and this deed, Shipper will continue to deal with Operator and Operator is entitled to exercise Powers under the Transmission Contract until Shipper has received written notice to the contrary from the Security Holder or as this deed otherwise requires. Operator will remain liable to perform its obligations under the Transmission Contract and subject to clause 3.12, 3.14 and 3.15 neither the Security Holder, nor any Beneficiary nor any Enforcing Operator Party is under any obligation of any kind under the Transmission Contract nor under any liability whatsoever in the event of any failure or default by Operator.

2.5 Acknowledgment by Operator

Operator consents to the terms of this deed, agrees that it is bound by and will co-operate in the implementation of this deed and Operator agrees that nothing in this deed affects, limits or derogates from its obligations to the Beneficiaries, the Security Holder and the Enforcing Operator Parties.

2.6 Payment of Money

If the Security Holder so directs at any time when the Security Holder, Beneficiaries or the Enforcing Operator Parties are exercising or enforcing their rights under the Security, Shipper must pay all money due to Operator under the Transmission Contract to the Relevant Account. This clause 2.6 is not intended to create any Encumbrance.

2.7 Acknowledgment by Operator

Operator acknowledges and consents to the obligation of Shipper as set out in clause 2.6 and agrees that any such payment by Shipper will discharge Shipper from its obligation to make that payment to Operator.

3. Regulating the Transmission Contract

3.1 Notification by Shipper

Shipper must notify the Security Holder, in writing, as soon as is reasonably practicable after it:

- (a) becomes aware of any Default Event; or
- (b) determines that it has, but for this deed, the Power to Terminate the Transmission Contract; or
- (c) becomes aware of, or commences, any dispute resolution or arbitration proceeding under the terms of, or in connection with, the Transmission Contract.

3.2 Copies of key notices

Shipper must give the Security Holder a copy of:

- (a) any Default Notice (including details of the Default Event and copies of all documents issued by Shipper to Operator under the Transmission Contract in any way relating to, or arising out of, the Default Event);
- (b) any Force Majeure Notice;
- (c) any T1 Capacity Notice given by Shipper under clause 16 of the Transmission Contract;
- (d) any notice of exercise of the Option by Shipper given by Shipper under clause 4.5 of the Transmission Contract;
- (e) any notice of the proposed creation of a charge over the Transmission Contract given to or received by Shipper under clause 25.2 of the Transmission Contract; and
- (f) any notice of proposed assignment of rights under the Transmission Contract given to or received by Shipper under clause 25.3 of the Transmission Contract,

at the same time it gives the applicable notice to Operator or Operator's representative (or as soon as is reasonably practicable thereafter), or as soon as possible following receipt of the applicable notice from Operator.

3.3 Operator information

Where Shipper has given Operator a Default Notice, Operator must promptly inform the Security Holder of all measures taken or intended to be taken by Operator to remedy the Default Event which is the subject of the Default Notice and Shipper and Operator each irrevocably consent to the giving of such information to the Security Holder.

3.4 Notification by Security Holder

- (a) The Security Holder must give notice to Shipper of any action taken by the Security Holder to exercise its rights, powers or remedies under a Security or otherwise to enforce a Security promptly after the relevant action is taken.
- (b) If and when the Security Holder or any Enforcing Operator Party ceases the enforcement of a Security, the Security Holder must give Shipper notice thereof.

3.5 Cure rights

- (a) Shipper agrees that, despite anything to the contrary in the Transmission Contract:
 - (i) Shipper cannot, and will not, Terminate the Transmission Contract in respect of Operator; and
 - (ii) the Transmission Contract cannot, and will not automatically Terminate in respect of Operator,unless:
 - (iii) the Security Holder has been notified in accordance with clause 3.2(a) of this deed; and
 - (iv) in respect of the Default Event which, but for this deed, would give rise to the applicable Termination Right:
 - (A) a Cure Notice has been received by the Security Holder;
 - (B) that Default Event has not been remedied in accordance with clause 3.6 of this deed, or other arrangements made to the reasonable satisfaction of Shipper within the Cure Period and upon expiry of that Cure Period, a Termination Right subsists; and
 - (C) at that time, no Independent Expert has been appointed in accordance with the Transmission Contract or no dispute resolution or arbitration is being conducted in accordance with the Transmission Contract in connection with the Default Event or any Termination Right arising from or in connection with that Default Event.
- (b) This clause does not affect or prejudice Shipper's rights to Liquidated Damages against Operator under clause 22.9 of the Transmission Contract following the giving of a notice to Operator if the default described in clause 22.5(a) of the Transmission Contract has not been remedied within 40 Working Days after the giving of an Operator Default Notice in respect of that default.
- (c) If, during any Cure Period, a further Default Event occurs, then Shipper may issue a further Default Notice in respect of that additional Default Event and if that further Default Event has not been remedied in accordance with clause 3.6 within the applicable Cure Period for that additional Default Event, then Shipper may Terminate the Transmission Contract in accordance with the terms of the Transmission Contract.

3.6 Remedy of Default Event

Each of the parties agrees with the others that a Default Event (other than the occurrence of an Insolvency Event) will be remedied:

- (a) if the Default Event is a repudiation, disclaimer or default by Operator in the performance of the obligations of Operator under clause 16 of the Transmission Contract, if the Requested T1 Capacity is provided within the relevant Cure Period (identified in paragraph (a) of the definition of "Cure Period");
- (b) if the Default Event is not of a kind specified in paragraph (a) and can be remedied by the payment of a readily ascertainable sum of money, if that sum of money and any consequential default interest is paid to Shipper within the relevant Cure Period (identified in paragraph (b) of the definition of "Cure Period");
- (c) if the Default Event is not of a kind specified in paragraphs (a) or (b) that default, if reasonably capable of remedy within the Cure Period, is remedied within the relevant Cure Period (identified in paragraph (c) of the definition of "Cure Period") or in relation to a default that is not reasonably capable of remedy within the Cure Period, a process to remedy such default has been commenced and is being diligently pursued within the Cure Period (provided that such default must be remedied within 6 months of the start of the Cure Period);
- (d) if the Default Event is not of a kind specified in paragraphs (a), (b) or (c) and can be remedied or compensated for by the payment of money, but the amount of that money cannot readily be ascertained, if Shipper's reasonable estimation of that amount and any consequential interest is paid within the relevant Cure Period (identified in paragraph (d) of the definition of "Cure Period") (provided that such default must be remedied within 6 months of the start of the Cure Period).

3.7 Remedy of an Insolvency Event

Without limiting any other rights of the Security Holder, any Enforcing Operator Party or any Beneficiary, if the Default Event is an Insolvency Event in respect of Operator, the Security Holder will be taken to have remedied the Default Event:

- (a) if and for so long as it procures the appointment of an Enforcing Operator Party over or to Operator's right, title or interest in or to the Transmission Contract and the Enforcing Operator Party complies or procures compliance with, and continues to comply with and procure compliance with, all of Operator's obligations under the Transmission Contract both before and after the Cure Period; or
- (b) if Operator's right, title and interest in or to or obligations under the Transmission Contract are assigned, transferred or novated to a person who is not Insolvent in accordance with clause 7.1; or
- (c) by any combination of the above,

provided it does so within the relevant Cure Period (as specified in paragraph (c) of the definition of "Cure Period").

3.8 Change of Cure Period

A Cure Period will be extended only if Shipper consents (such consent to be granted at Shipper's discretion) in writing to a longer period after the Security Holder, an Enforcing Operator Party or a Beneficiary has demonstrated to the reasonable satisfaction of Shipper that a course of action is being diligently pursued to remedy or otherwise overcome the effect of the Default Event. More than one extension may be sought and obtained to a Cure Period.

3.9 Right to remedy

Each of Shipper and Operator agree that:

- (a) the Security Holder, another Enforcing Operator Party or a Beneficiary may (but are not obliged to), in addition to Operator's rights to remedy any Default Event or prevent the occurrence of a Default Event, do all things necessary and take any steps to remedy, or procure the remedy of, any Default Event or to prevent the occurrence of a Default Event and in doing so acts as the agent of Operator; and
- (b) any remedy that remedies the Default Event by the Security Holder, an Enforcing Operator Party or a Beneficiary remedies the Default Event for the purposes of the Transmission Contract.

3.10 Information, access and discussions

Upon written request from the Security Holder, an Enforcing Operator Party or a Beneficiary, Shipper must:

- (a) promptly provide the Security Holder, the Enforcing Operator Party or Beneficiary, as applicable, with all information reasonably requested by that person for the purpose of taking any steps under clause 3.9(a) (Right to remedy) or exercising any Power under the Security or this deed, including details of:
 - (i) any steps Shipper considers appropriate to be taken in the circumstances; or
 - (ii) any progress made in remedying any Default Event;
- (b) promptly after a request from the Security Holder or an Enforcing Operator Party, hold discussions in good faith with that person in connection with the remedying of any Default Event; and
- (c) provide the Security Holder and its representatives and consultants a reasonable opportunity, after the occurrence of a Default Event and while it is subsisting, to attend and participate in all negotiations, consultations and meetings undertaken or convened:
 - (i) pursuant to an obligation imposed on any party to the Transmission Contract to negotiate, consult or agree; and
 - (ii) in an endeavour to resolve any material dispute with Operator under the Transmission Contract.

3.11 Undertakings by Security Holder

- (a) The Security Holder undertakes that, during any Cure Period, if a decision has been reached whereby the Security Holder or an Enforcing Operator Party does not intend to procure a remedy of a Default Event in accordance with clause 3.6, then the Security Holder will notify Shipper, as soon as reasonably practicable after such decision has been reached. If the Security Holder notifies Shipper that it does not intend to procure a remedy of a Default Event within the applicable Cure Period in accordance with clause 3.6, then clause 3.5(a) shall cease to apply from the date of receipt of such notice.
- (b) The Security Holder undertakes that during any Cure Period it will not, and any Enforcing Party will not, materially interfere with, prevent or restrict Operator's continued provision of the "T1 Service" (as defined in the Transmission Contract) in accordance with the terms of the Transmission Contract, provided that and for so long as:

- (i) Shipper has not committed a default which is subsisting under the Transmission Contract which would allow Operator a right to terminate the Transmission Contract; and
- (ii) the Receiver, the Security Holder or any Enforcing Party is exercising any Power over Operator's right, title and interest in the Transmission Contract.

3.12 Appointment and rights of Enforcing Operator Party

Without limiting the rights of the Security Holder under any Security following an event that renders a Security enforceable, but subject to this deed:

- (a) the Security Holder may appoint an Enforcing Operator Party to exercise any or all of Operator's rights or perform some or all of Operator's obligations under the Transmission Contract; and
- (b) and subject to clause 7.1, the Security Holder or any Enforcing Operator Party may transfer or dispose of Operator's rights and obligations under the Transmission Contract to another party.

3.13 Notification

If the Security Holder has enforced or exercised any of its rights, powers or remedies under any Security, including by appointing an Enforcing Operator Party or commencing proceedings to foreclose, the Security Holder must notify Shipper promptly after it has enforced or exercised its rights, powers or remedies (which notice must set out the identity and capacity of any such Enforcing Operator Party).

3.14 Consequences of enforcement

If the Security Holder appoints an Enforcing Operator Party under clause 13.12(a) then:

- (a) Shipper must continue to duly and punctually perform and observe its duties and obligations under the Transmission Contract (in accordance with its terms);
- (b) the Transmission Contract shall remain in full force and effect; and
- (c) the Enforcing Operator Party is not liable to Shipper in respect of any events, acts or omissions which have occurred or should have occurred before the date of the appointment, or for any liability of Operator to Shipper in relation to the Transmission Contract in respect of any event, act or omission before the date of the appointment.

3.15 Rights to enforce

Nothing in this deed prevents the Security Holder from:

- (a) giving any notices under the Security;
- (b) demanding the payment of any money under the Security;
- (c) exercising or enforcing any power, right or remedy afforded generally to unsecured creditors or under any agreement other than the Security; or
- (d) enforcing the Security.

3.16 Removal of Cure Period

If, during a Cure Period, the Security Trustee or any Enforcing Party causes or allows Operator to commit a separate Default Event to the one in respect of which the Cure Period is running (**Cure**

Period Default) then Shipper may immediately serve a Default Notice on Operator and the Security Trustee, and Shipper may subsequently terminate the Transmission Contract in accordance with its terms and shall not be required to comply with clause 3.5 of this deed in relation to such Cure Period Default.

4. Representations and Warranties

4.1 Representations and warranties

Each of Shipper and Operator represents and warrants to the Security Holder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the power to enter into and perform its obligations under this deed and the Transmission Contract, to carry out the transactions contemplated by them and to carry on its business as now conducted or contemplated;
- (c) this deed and the Transmission Contract constitute its legal, valid and binding obligations enforceable against it in accordance with their terms subject only to laws generally affecting creditors' rights and principles of equity;
- (d) the Transmission Contract is in full force and effect, the obligations of Operator under it are not subject to any conditions precedent (which have not been satisfied) and, if required under the Transmission Contract, any notice to proceed and notice of satisfaction of conditions precedent has been received by Shipper as applicable prior to the date of this deed;
- (e) it has in full force and effect, and is complying with, the consents, licences, approvals and authorisations necessary for it to enter into this deed and the Transmission Contract, to comply with its obligations and exercise its rights under them and to allow them to be enforced;
- (f) the execution, delivery and performance by it of this deed and the Transmission Contract and each transaction contemplated under them does not cause a limitation on its powers or exceed the powers of its directors, or contravene in any respect:
 - (i) any law, regulation, treaty, judgment, ruling, order or decree binding on it or to which any of its assets are subject;
 - (ii) its constituent documents (if any); or
 - (iii) any other document, the Transmission Contract, arrangement or obligation which is binding on it or its assets;
- (g) each representation and warranty made by it under the Transmission Contract is true and correct and not misleading when made and when repeated;
- (h) it has not entered into this deed or the Transmission Contract in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of any of the other parties to this deed nor any of their respective Related Entities;
- (i) it is not in default under the Transmission Contract and except as disclosed to the other parties to this deed prior to any repetition of this representation and warranty after the date of this deed:
 - (i) no Default Event is subsisting and it is not able to Terminate the Transmission Contract; and

- (ii) no condition exists (or would exist with the giving of notice, lapse of time or fulfilment of any condition or any of them) which would interfere with its ability to perform its obligations under the Transmission Contract or entitle it to Terminate the Transmission Contract; and
- (j) it has not received actual notice of any notice of any assignment, transfer, novation, Encumbrance, or other dealing in relation to the Transmission Contract.

4.2 Notification if incorrect

Each of the parties undertakes to notify the other parties promptly of any representation or warranty made by it in this deed or the Transmission Contract which is found to be incorrect or misleading when made.

5. Taxes and GST

5.1 Taxes

Operator agrees to pay all fees, Taxes and charges, including fines and penalties, payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, delivery, performance or enforcement of this deed or any payment receipt or other transaction contemplated by them.

5.2 GST gross up

If any party:

- (a) is liable to pay GST on a supply made in connection with this deed; and
- (b) certifies to the recipient of the supply that it has not priced the supply to include GST, then the recipient of the supply agrees to pay that party an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

6. Notices

6.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications (a **Notice**) in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in clause 6.3 of this deed or, if the recipient has notified otherwise for the purpose of this clause, then marked for attention in the way last notified.

6.2 Delivery

A Notice must be:

- (a) left at the address set out or referred to in clause 6.3 of this deed;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in clause 6.3 of this deed;
- (c) sent by fax to the fax number of the party set out or referred to in clause 6.3 of this deed; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the Notice must be to that address or number.

6.3 Parties details

Operator

DBNGP (WA) Transmission Pty Limited, Level 7, GHD House, 239 Adelaide Terrace, Perth 6000, Western Australia

Fax: (08) 9223 4301

Attention: Manager Commercial

Shipper

[To be completed]

Security Holder

[To be completed]

6.4 When effective

A Notice takes effect from the time it is received unless a later time is specified.

6.5 Receipt - post

If sent by post, a Notice is taken to be received three Working Days after posting (or seven days after posting if sent to or from a place outside Australia).

6.6 Receipt - fax

If sent by fax, a Notice is taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

6.7 Receipt - general

Despite clauses 6.5 and 6.6, if a Notice is received after 5.00pm in the place of receipt or on a non-Working Day, it is to be taken to be received at 9.00am on the next Working Day.

7. Assignment

7.1 Assignment of the Transmission Contract

Shipper and Operator agree with the Security Holder that the Security Holder and the Enforcing Operator Parties may, in the exercise or enforcement of their Powers under the Security and this deed, without the consent of Shipper or Operator (and without the need for them or anyone else to comply with any provision of the Transmission Contract):

- (a) assign (or seek to assign) all or any of Operator's rights, title or interest in or to the Transmission Contract; or
- (b) transfer or novate Operator's obligations under or in connection with the Transmission Contract,

to any person (including any person who takes an assignment of any or all of Operator's right, title or interest in and to, and/or a transfer or novation of any or all of Operator's obligations under, the Transmission Contract) (**Permitted Assignee**) provided that:

- (c) the Permitted Assignee is a person to whom an assignment would be permitted by clause 25.3 of the Transmission Contract or a person to whom Shipper has given its consent (such consent not to be unreasonably withheld or delayed);
- (d) the Permitted Assignee enters into a deed of assumption with Shipper on terms reasonably satisfactory to Shipper so as to ensure the assignment, transfer or novation of the applicable rights, title, interest and obligations; and
- (e) Shipper agrees, acting reasonably, that the Permitted Assignee has the:
 - (i) contractual and ownership rights necessary to access the DBNGP for the purpose of performing all of Operator's obligations under the Transmission Contract; and
 - (ii) financial capability and technical expertise to enable the Permitted Assignee to effectively operate the DBNGP and to perform all of Operator's obligations under the Transmission Contract.

Each of Shipper and Operator agree to do anything reasonably requested by the Security Holder or an Enforcing Operator Party (including signing and producing documents and effecting the transaction by way of a novation) to enable or facilitate that assignment, transfer or novation.

7.2 New tripartite

Each of Shipper and Operator agrees, promptly on the written request of the Security Holder, to execute a deed substantially in the form of this deed with:

- (a) the person to whom the Security Holder assigns, transfers or novates rights or obligations or both under this deed; and
- (b) if the rights or obligations or both of Operator under the Transmission Contract are assigned, transferred or novated, the financier (or an agent or trustee on its behalf) of the assignee, transferee or novatee.

7.3 Assignment by Security Holder

Shipper acknowledges that:

- (a) the Security Holder may assign its rights and novate or otherwise transfer its obligations under this deed to any replacement security trustee appointed in relation to the Security; and
- (b) any other Beneficiary may assign or novate the whole or any part of its interest in the Security and the documents relating to the Security or the money secured by the Security.

7.4 Assignment by Shipper

Shipper must not assign or otherwise dispose of, novate or deal with its rights or obligations under the Transmission Contract without the prior written consent of the Security Holder, provided that such consent is not required where the transfer is permitted under the terms of the Transmission Contract and such transfer is to a new counterparty who is in a position to meet Shipper's obligations under the Transmission Contract and who will provide security, in favour of Operator, for those obligations on terms and conditions acceptable to the Security Holder, acting reasonably.

8. General

8.1 Counterparts

This deed may consist of a number of copies of this deed each signed by one or more parties to the deed. When taken together, the signed copies are treated as making up the one document.

8.2 Governing law

- (a) This deed is governed by the law in force in the State of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of that State.
- (b) Each party waives any rights it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

8.3 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

8.4 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

8.5 No liability for loss

- (a) A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this deed.
- (b) In relation to any breach of this deed, the party in breach will only be liable to any other party for damages for direct losses attributed to any such breach and the rights of any other party to damages for indirect or consequential loss in respect of such breach are hereby expressly excluded.

8.6 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed.

8.7 Variation and waiver

A provision of this deed or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound, and in all cases, the Security Holder.

8.8 No merger

The warranties, undertakings and indemnities in this deed do not merge upon the occurrence of any event or activity.

8.9 Inconsistent law

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

8.10 Further security

If the Security Holder is granted any additional Encumbrance over or in respect of the Transmission Contract, each party agrees that the additional Encumbrance is to be treated in all respects as part of the Security and subject to the provisions of this deed.

8.11 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

8.12 Further steps

Each party agrees to do anything the Security Holder reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed):

- (a) to bind it and any other person intended to be bound by this deed; and
- (b) to show whether it is complying with the Transmission Contract or this deed.

8.13 Rights and obligations are unaffected

Rights given to the Security Holder under this deed and the other parties' liabilities under it are not affected by anything which might otherwise affect them at law.

EXECUTED as a deed.

**EXECUTED by DBNGP (WA)
TRANSMISSION PTY LIMITED
ABN 69 081 609 190** in accordance with
section 127 of the Corporations Act 2001:

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [SHIPPER] ABN [#] in
accordance with section 127 of the
Corporations Act 2001:

Signature of director

Signature of director/secretary

Name

Name

**EXECUTED by [SECURITY HOLDER]
ABN [#]** in accordance with section 127 of
the Corporations Act 2001:

Signature of director

Signature of director/secretary

Name

Name